



This document is scheduled to be published in the Federal Register on 07/22/2016 and available online at <http://federalregister.gov/a/2016-17356>, and on [FDsys.gov](http://FDsys.gov)

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

**Docket No. NHTSA-2016-0077**

#### **NHTSA Enforcement Guidance Bulletin 2016-03; Procedure for Invoking Paragraph 17 of the May 4, 2016 Amendment to the November 3, 2015 Takata Consent Order**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) is issuing this Enforcement Guidance Bulletin to inform the public of the process and procedure the Agency has established in connection with Paragraph 17 of the May 4, 2016 Amendment to the November 3, 2015 Consent Order with TK Holdings Inc., and the standards and criteria that will guide Agency decision-making.

#### **FOR FURTHER INFORMATION CONTACT:**

For legal issues: Elizabeth Mykytiuk, Office of the Chief Counsel, NCC-100, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, D.C. 20590 (telephone: (202) 366-5263).

For general information regarding NHTSA's investigation into Takata Air Bag Inflator ruptures and the related recalls: <http://www.safercar.gov/rs/takata/index.html>.

#### **SUPPLEMENTARY INFORMATION:**

The National Highway Traffic Safety Administration (NHTSA or Agency) is issuing this Enforcement Guidance Bulletin (the "Bulletin") to inform the public of the circumstances under which NHTSA would consider invoking Paragraph 17 of the Agency's May 4, 2016 Amendment

to the November 3, 2015 Consent Order with TK Holdings Inc. (“Takata”)<sup>1</sup> to alter the recall schedule, as well as to provide guidance on the standards and criteria that would guide such decision-making.

## **I. Background**

On June 11, 2014, NHTSA opened a formal defect investigation (Preliminary Evaluation, PE14-016) into certain Takata air bag inflators (“inflators”) that may become over-pressurized and/or rupture during air bag deployment, resulting in death or injury to the driver and/or passenger. On February 24, 2015, NHTSA upgraded and expanded this investigation (Engineering Analysis, EA15-001).

Subsequently, Takata agreed to submit four Defect Information Reports (DIRs) on May 18, 2014, declaring that a defect existed in certain inflator types that were manufactured by Takata during certain periods of time. *See* Recall Nos. 15E-040, 15E-041, 15E-042, and 15E-043. Those DIRs triggered an obligation on the part of affected motor vehicle manufacturers to conduct a recall of motor vehicles containing the defective inflators. *See* 49 CFR 573.5(a).

On November 3, 2015, NHTSA issued, and Takata agreed to, a Consent Order, which among other things established conditions upon which Takata would be required to expand the scope of the defective inflator population by filing future DIRs. Again, the filing of such DIRs by Takata triggered an obligation by the motor vehicle manufacturers to submit DIRs covering the affected motor vehicles and to conduct a recall of motor vehicles in which the defective inflators are installed. *See* 49 CFR 573.3(f), 573.5(a); *see also* Coordinated Remedy Order at ¶ 46 (Nov. 3, 2015).

---

<sup>1</sup> The November 3, 2015 Consent Order and May 4, 2016 Amendment are available on NHTSA’s website at <http://www.safercar.gov/rs/takata/index.html>, under the “Related Documents” hyperlink.

On May 4, 2016, NHTSA and Takata agreed to an Amendment to the November 3, 2015 Consent Order (the “Amendment”), under which Takata agreed to declare a defect in all driver and passenger inflators that contain an ammonium nitrate-based propellant, and do not contain a moisture-absorbing desiccant. The Amendment was based upon the findings of three independent research organizations that most of the inflator ruptures are associated with long-term propellant degradation caused by years of exposure to temperature fluctuations and intrusion of moisture present in the ambient atmosphere. *See* Amendment at ¶ 2. Based upon the Agency’s conclusions regarding the root cause of the inflator ruptures, among other reasons, the recall is to be conducted on a rolling basis, with Takata filing additional DIRs on the following schedule (which is set forth in Paragraph 14 of the Amendment):

<b>DIR Dates</b>	<b>Zone A Population</b>	<b>Zone B Population</b>	<b>Zone C Population</b>
May 16, 2016	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators - MY 2011 & older	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators - MY 2008 & older	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators - MY 2004 & older
December 31, 2016	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators – MY 2012 & older	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators – MY 2009 & older	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators – MY 2008 & older
December 31, 2017	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators - MY 2013 & older	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators - MY 2010 & older	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators - MY 2009 & older
December 31, 2018	All remaining vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators	All remaining vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators	All remaining vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators
December 31, 2019	All like for like non-desiccated frontal Takata PSAN replacement parts	All like for like non-desiccated frontal Takata PSAN replacement parts	All like for like non-desiccated frontal Takata PSAN replacement parts

As set forth in Paragraph 7.a. of the Amendment, Zone A comprises the states and U.S. territories with the greatest temperature cycling and absolute humidity. It includes the following states and U.S. territories: Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands (Saipan), and the U.S. Virgin Islands.

Zone B comprises states with moderate temperature cycling and absolute humidity. It includes the following states: Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico,

North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia. *See* Amendment at ¶ 7.b.

Zone C comprises states with lower temperature cycling and absolute humidity. It includes the following states: Alaska, Colorado, Connecticut, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. *See* Amendment at ¶ 7.c.

The Amendment also sets forth a procedure under which the DIR schedule above may be modified or amended. More specifically, Paragraph 17 provides:

Based on the presentation of additional test data, analysis, or other relevant and appropriate evidence, by Takata, an automobile manufacturer, or any other credible source, NHTSA may, after consultation with Takata, alter the schedule set forth in Paragraph 14 to modify or amend a DIR or to defer certain inflator types or vehicles, or a portion thereof, to a later DIR filing date. Any such evidence must be submitted to NHTSA no later than one-hundred-twenty (120) days before the relevant DIR filing date. This paragraph applies only to the DIRs scheduled to be issued on or after December 31, 2016 under the schedule established by Paragraph 14 of this Amendment.

The Agency believes it is important to provide additional guidance on the process and conditions under which NHTSA would consider altering the recall schedule to modify or amend a DIR or defer the filing of a DIR, as well as guidance on the standards and criteria that would guide such decision-making. This process shall not be used to expedite or expand the DIR schedule, nor shall it be used to eliminate a population of vehicles from the recall.

## **II. Process and Procedure**

A. Petition: No later than 120 days before the applicable DIR filing date, Takata, a vehicle manufacturer, or other credible source (the “petitioner”) may petition the Agency for a modification or amendment to the DIR schedule. The petition shall be in writing and shall be directed to the Associate Administrator for Enforcement, with a copy to Chief Counsel. The petition shall specify the precise modification or amendment to the DIR schedule being requested by the petitioner, including the affected vehicle makes, models, and model years (the “particular class of vehicles”). The petition shall also set forth all data, information, and arguments of the petitioner supporting its petition. To the extent the petitioner requests confidential treatment under 49 CFR part 512 in connection with any data, information, and arguments, it shall submit a publicly available summary of such confidential materials.

B. Public Notice and Comment: Within 14 days of receiving a petition, NHTSA shall publish a notice of the petition in the Federal Register. The notice shall include a brief summary of the petition, a description of the particular class of vehicles, a statement of the availability of the petition and other relevant information for public inspection, and an invitation to interested persons to submit written data, information, and arguments concerning the petition to a public docket. The notice of the petition shall also specify the deadline for submitting data, information, and arguments concerning the petition, which deadline shall not be less than 14 days after the Federal Register notice.

C. Disposition of the Petition: After reviewing the written data, views, and arguments from the petitioner and any interested persons, as well as other available information, and after consulting with Takata, the Associate Administrator for Enforcement shall make a decision whether to grant or deny the petition. Notice of the grant or denial of the petition shall

be issued to the petitioner, and to Takata and any affected vehicle manufacturer, no less than 45 days before the relevant DIR filing date. Notice of the grant or denial of the petition shall also be published in the Federal Register.

D. Appeal: Within 14 days of notice of a grant or denial in the Federal Register, any interested person may appeal the grant or denial of the petition to the Administrator. An appeal shall be in writing and shall be directed to the Administrator, with a copy to the Chief Counsel. The Administrator will base his final decision on the data, information, and arguments submitted in support of the petition and during the comment period, and other available information. The final decision will be issued no less than 5 days before the applicable DIR filing date. Notice of final decision shall also be published in the Federal Register.

### **III. Standard of Proof**

NHTSA may grant the petition if the Agency finds that the written data, information, and arguments regarding the petition and other available information demonstrate, by a preponderance of the evidence, that either: (i) there has not yet been, nor will be for some period of years in the future, sufficient propellant degradation to render the inflators contained in the particular class of vehicles unreasonably dangerous in terms of susceptibility to rupture; or (ii) the service life expectancy of the inflators installed in the particular class of vehicles is sufficiently long that they will not pose an unreasonable risk to motor vehicle safety if recalled at a later date.

The Agency may rely on any relevant criteria in determining whether the available evidence satisfies the standard of proof. Generally, a petitioner may satisfy the standard of proof by submitting evidence concerning the physical attributes of the category of inflators at issue. Such evidence may include, but is not limited to, inflator diffusion rates, booster and propellant

moisture content (over time), wafer diameter, and closed-bomb test data. In evaluating this evidence, the Agency will closely scrutinize the number of inflators tested, the age of the inflators tested, and the history of the vehicles from which the inflators were removed. A petitioner may also satisfy the standard of proof through robust predictive modeling, which modeling shall be independently verified by NHTSA's expert, Dr. Harold Blomquist. In all instances, a petition will be denied if there has been a rupture incident in the field or in testing that involves the inflator type contained in the particular class of vehicles at issue.

**Applicability/Legal Statement:** This Enforcement Guidance Bulletin sets forth NHTSA's current interpretation and thinking on the process and procedures under Paragraph 17 of the Amendment, and the standards and criteria that will guide its decision-making. This Bulletin is not a final agency action and is intended as guidance only. This Bulletin is not intended, nor can it be relied upon, to create any rights enforceable by any party against NHTSA, the Department of Transportation, or the United States. Moreover, the process and procedures set forth herein do not establish any defense to any violations of the statutes and regulations that NHTSA administers. This Bulletin may be revised without notice to reflect changes in NHTSA's evaluation and analysis, or to clarify and update text.

**Authority:** 49 U.S.C. 30101, *et seq.*, 30118, 30162, 30166(b)(1), 30166(g)(1); delegation of authority at 49 C.F.R. 1.95(a).

Issued: July 15, 2016.

---

Mark R. Rosekind, Ph.D.  
Administrator

Billing Code: 4910-59-P

[FR Doc. 2016-17356 Filed: 7/21/2016 8:45 am; Publication Date: 7/22/2016]